IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RCRev..No. 234 of 2004()

RCA.3/1999 of PRL. DISTRICT COURT, THALASSERY
RCP.115/1996 of MUNSIFF'S COURT, THALASSERY
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PETITIONERS/RESPONDENTS 2 & 9/RESPONDENTS 3 & 10:
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1. PUTHUSSERIKKANDY RAGHUNATH,
CHANDRAVILASAM HOTEL, NEAR OLD KODUVALLY BRIDGE,
MANNAYAD DESOM, THALASSERY AMSOM,
P.O. NETTUR, THALASSERY - 5, DIST.KANNUR.

2. KARUNAKARAN, WORKER,
CHANDRAVILASAM HOTEL, DO. DO.

BY ADV. SMT.VIDHYA. A.C

RESPONDENTS: APPELLANTS/RESPONDENTS 1 & 3 TO 8/RESPONDENTS:
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1. M.P. LEELAVATHY, D/O. MADHAVI,
AGED 70 YEARS, NO OCCUPATION, RESIDING AT
MOOZHIKKARA HOUSE, NETTUR, MANNAYAD DESOM,
THALASSERY AMSOM, P.O. NETTUR,
THALASSERY - 5, DIST.KANNUR.

2. M.P. RADHA, AGED 67 YEARS, DO. DO.

3. PUTHUSSERIKKANDY CHANDRAN,
KALIYATH HOUSE, MANNAYAD DESOM,
THALASSERY AMSOM, P.O. NETTUR, THALASSERY-5,
DIST. KANNUR.

4. PUTHUSSERIKKANDY PURUSHOTHAMAN, DO. DO.

5. PUTHUSSRIKKANDY CHANDRAMATHI, DO. DO.

6. PUTHUSSERIKKANDY KAMALA, DO. DO.

7. PUTHUSSERIKKANDY GEETHA, DO. DO.

8. PUTHUSSERIKKANDY USHA, DO. DO.

9. PUTHUSSERIKKANDY MAHIJA, DO. DO.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 02 /08 /2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR &

K.T.SANKARAN, JJ.

R.C.R. No.234 of 2004-F

Dated 2nd August, 2007.

ORDER

Sankaran, J.

Respondents 3 and 10 in R.C.P. No.115/96 on the file of the Court of the Rent Controller (Munsiff), Thalassery are the revision petitioners. The Rent Control Petition was filed by respondents 1 and 2 herein under Sections 11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The parties are hereinafter referred to as they are arrayed in the Rent Control Petition, for the sake of convenience.

2. The petition schedule building belonged to the predecessor-in-interest of the petitioners and their sister, who died subsequently, leaving two daughters. The predecessor of the petitioners, namely, Madhavi died in the year 1995 and the petitiones succeeded to her estate, they having obtained 2/3rd right in the petition schedule building. The case of the petitioners is that the petition schedule building was originally let out to one Kunhappu, the

predecessor-in-interest of respondents 1 to 9, on a monthly rent of Rs.10/- in the year 1972. The said Kunhappu died on 12.10.1993 and his rights devolved on respondents 1 to 9. According to the petitioners, respondents 1 to 9 have sub-let the building to the 10th respondent. It is also the case of the petitioners that they bona fide require the petition schedule building for their occupation, for conducting a Tailoring shop for making garments. It was contended by the petitioners that the rent was in arrears and relief was sought under Section 11(2)(b) in that behalf.

3. Only respondents 3 and 10 contested the petition. The 3rd respondent contended that there was no sub-lease to the 10th respondent and that he is only an employee in the hotel run by the respondents 1 to 9. The bona fide need put forward by the petitioners was also challenged by the 3rd respondent. The claim for eviction on the ground of arrears of rent was also made in the Rent Control Petition. Since the rent which was in arrears was paid, the ground under Section 11(2)(b) did not survive for consideration.

4. The Rent Control Court held that the ground under Section 11(3) was not established by the petitioners. It was also held by the Rent Control Court that though the 10th respondent was inducted as a sub-tenant, there was no objectionable sub-lease and that there was acquiescence in the sub-lease. On that ground the relief under Section 11(4)(i) was denied to the petitioners.

5. On appeal by the petitioners landlords, the appellate authority set aside the findings of the Rent Control Court and ordered eviction under Sections 11(3) and 11(4)(i) of the Act. The appellate authority held that the bona fide need put forward by the petitioners is established. It was also held that there was sub-lease to the 10th respondent and that the Rent Control Court was not justified in casting the burden of proof on the petitioners to produce the rent chit and to establish that there was no covenant not to sub-let. The judgment of the appellate authority is under challenge in this revision, at the instance of respondents 3 and 10.

6. The petitioners are sisters and they are spinsters. At the time of filing the Rent Control Petition, the first petitioner was aged 65

years and the second petitioner was aged 64 years. The 1st petitioner was working in the Telephone Department and she retired. It has come out in evidence that she gets a monthly pension of Rs.3000/-. The second petitioner is a physically challenged person and she has 52% disability. The case of the petitioners is that in order to have a decent living, it is necessary to do some business in the petition schedule building and that the pension received by the 1st petitioner is not sufficient to meet their expenses. It was contended that they have no other building or any other avocation. There is no other source of income and this prompted them to file the Rent Control Petition to get vacant possession of the petition schedule building. Though, the 3rd respondent contended that the petitioners have sufficient income and other properties, it is not proved. The only answer elicited from the side of PW1 is that the petitioners own a residential property having an extent of 40 cents. This is hardly sufficient to meet the expenses of the petitioners, according to them.

7. The appellate authority. on an analysis of the facts and circumstances of the case and the evidence on record, held that the bona fide need is established in the case. It was also held by the appellate

authority that the finding of the Rent Control Court that the bona fide need is not established on the ground that the petitioners had no previous experience in the field, is unsustainable. We are in agreement with the view taken by the appellate authority. To claim eviction under Section 11(3), for the purpose of conducting a business, there is no legal requirement that the landlord should have previous experience.

8. As regards the finding of sub-letting under Section 11(4)(i), both the authorities found that as a matter of fact there was sub-letting in favour of the 10th respondent. The only question is whether there is objectionable sub-letting, warranting an order under Section 11(4)(i) of the Act. There is no case for any of the respondents in the Rent Control Petition that the rent chit executed by the predecessor of respondents 1 to 9 contained a clause permitting the tenants to sub-let the building. It is not the case of respondents 1 to 9 that the sub-lease was made as permitted in the rent chit. On the other hand, their case is that there was no sub-lease at all and that the 10th respondent is only an employee and not a sub-lessee. The respondents had at no point of time called upon the petitioners to produce the rent chit. The non-production

of the rent chit could have been taken note of and an adverse inference could have been taken against the petitioners only if the respondents filed a petition before the Rent Control Court, calling upon the petitioners to produce that document. Having not done so, the respondents could not accuse the petitioners for not producing the rent chit, in order to establish the case of the respondents that the lease deed permitted the tenants to sub-let the petition schedule building. The Rent Control Court was not justified, as rightly held by the appellate authority, in holding that the burden was on the landlord to produce the rent chit and to establish that there was no objectionable sub-lease. The findings of the appellate authority are reasonable, just and based on oral and documentary evidence available in the case. It cannot be said that the findings of the appellate authority are either perverse or illegal or improper. There is no warrant for interference under Section 20 of the Act in this revision. For the foregoing reasons, we are of the view that the revision lacks merit and it is accordingly dismissed.

9. However, taking note of the submission made by the learned counsel for the revision petitioners and the facts and

circumstances of the case, we are of the view that three months' time can be granted to respondents 2 to 9 in the Rent Control Petition to vacate the premises, on condition that any of them shall file an affidavit on behalf of the rest of them as well before the Rent Control Court within three weeks from today, undertaking to vacate the premises on or before the expiry of three months. They shall also pay the arrears of rent within one month and continue to pay the rent accruing every month, till they vacate the premises.

K. BALAKRISHNAN NAIR,JUDGE.

K.T.SANKARAN, JUDGE.

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